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CURRENT TOPICS

New Ministers

IT is not necessary to be of the same political complexion as the Prime Minister in order to approve his choice, at any rate from the legal profession, of Ministers for his "caretaker cabinet." Sir DONALD SOMERVELL, K.C., who has held the office of Attorney-General for a longer period than any of his predecessors for at least a hundred years past, becomes Home Secretary. Sir DONALD will no doubt appreciate the change, and there can be little doubt that his special talents of level-headed humaneness and sincerity will be an asset in his new office. Of the remaining appointments of lawyers, Sir DAVID MAXWELL FYFE'S combination of solidity and brilliance and Sir WALTER MONCKTON'S ability to see at once into the heart of a case, should go well together in their respective offices of Attorney-General and Solicitor-General. To these, and to all lawyers who have been selected by the Prime Minister to form the new Ministry, we tender our respectful congratulations.

Sir Donald Somervell

So far as the new Home Secretary is concerned, he was appointed Solicitor-General in October, 1933, and Attorney-General in March, 1936, and thus has been continually in office as a law officer for little short of twelve years, of which more than nine were as Attorney-General. It is difficult to conceive of any similar record in the history of the law officership. LORD HARDWICKE was a law officer from 1720 to 1733, and this would appear to be the nearest parallel, though LORD CAMPBELL held office from 1832 to 1841 and Sir J. HOLKER came very near to a similar record so far as the senior office is concerned. In addition to the many constitutional problems on which it became Sir Donald's duty to advise as a result of this war, it ought not to be forgotten that a not inconsiderable number of vital constitutional questions occurred during his Attorney-Generalship. Not the least of these were the budget leakage problem in 1936 and the abdication later in that year, followed by the Spanish Civil War, and, finally, all the problems leading up to the present war. It is unlikely that any law officer has ever been faced with such a multitude of tasks of similar gravity, and whatever may be Sir DONALD'S political future, we feel it would be singularly ungracious if some small tribute were not made to his record of service on behalf of his country in her time of greatest need.

Poor Persons Procedure: Law Society Report

THE Law Society has recently published its nineteenth annual report covering the work in the year 1944 of the Poor Persons Committee of The Law Society and the Provincial Law Societies. It is based on the reports of seventy provincial committees. It states that the number of applications for poor persons certificates received during 1944 in the country as a whole increased. It is gratifying to learn that with very few exceptions indeed all the committees have reported that once the cases have been assigned for conduct the solicitors concerned have brought those cases on for trial with reasonable speed, having regard to the present widespread shortage of staff. Once again, the overwhelming majority of the applications, 95 per cent., were for matrimonial proceedings, and, of these, 30 per cent. were founded on the new grounds provided by the Matrimonial Causes Act, 1937. The Naval Legal Aid Scheme had worked satisfactorily during the past year and over 6,000 applications had been dealt with by the sections concerned with English law. Matrimonial problems were 80 per cent. of the total, and landlord and tenant matters also formed a large proportion. Seventy thousand cases of all kinds were dealt with by the Army and Royal Air Force Legal Aid Scheme by the end of 1944, not including cases completely dealt with by advice in Unit Legal Aid Bureaux. The staff position as regards the Services Divorce Department has slightly improved, but is still very difficult, and was disorganised by the rocket and flying bomb attacks. Nevertheless, during the year 3,782 cases were assigned as compared with 3,424 in 1943 and 1,749 in 1942, and 3,188 petitions were filed, as compared with 2,125 in 1943 and 795 in 1942. Decrees absolute were made in 1,223 cases, as compared with 848 in 1943 and sixteen in 1942. In a lighter vein, the report records the case of a soldier petitioner who returned his petition with the word "Admiralty" in the heading "Probate Divorce and Admiralty Division" struck out and "Military" inserted, pointing out that he was a soldier, and not, as the department seemed to believe, a sailor.

Poor Persons Cases: Civil Section

A TOTAL of 1,716 cases in the civil section were assigned, according to the report, in 1943 and 1944, 726 in 1944 and 990 in 1943. In 1943, 440 petitions were filed, and 446 in 1944. In 1944 there were 145 decrees absolute compared with four in 1943. By the 31st December, 1944, forty-eight provincial Poor Persons Committees had taken advantage of the establishment of the civil section, and between them had assigned 806 cases for conduct. At the beginning of the year there were 4,696 applications outstanding from the previous year before the London Committees and during the year a further 11,137 applications were received. Of the new applications approximately 97 per cent. related to matrimonial causes. The London Committees dealt with 11,832 matters,

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as compared with 7,313 in 1943; 12,525 applications were disposed of in London and the Provinces in 1943 and 12,725 in 1944, as against 10,446 in 1942. The cost of the procedure for the year 1943–44 was £11,549, as against £11,404 in the previous year. Income from the Treasury grant of £11,000 and interest amounting to £242 resulted in a deficiency for the year of £307. It is anticipated that the expenditure for the year 1944–45 will be approximately £12,450, which, with the sum of £847, being the total deficiency for the years 1942–43 and 1943–44 gave a total of £13,297. The Treasury grant is £14,500 and interest will provide a further £380. It is estimated that at the close of the year 1944–45 there will be a surplus of £1,593. For the year 1945–46 it is estimated that there will be a balance of £11,137 to be met by the Treasury grant of £11,000.

War-time Obstructions on the Highway

A LETTER, which is both an appeal and a warning, has been sent to the Prime Minister by the Pedestrians' Association, asking that death traps, in the way of surface shelters and other war-time obstructions, shall be cleared from the roads before the basic petrol ration is restored. The letter records the association's feelings of dismay on learning that there will be a restoration of the basic petrol ration to private vehicles. They believe that this feeling is shared widely among the public. The ration, it is stated, is to be resumed with such precipitate haste that time will not permit of the roads being restored to any condition compatible with public safety for the accommodation of a new influx of vehicles. They appreciate that the renewal of road surfaces to a pre-war standard will necessarily occupy considerable time, but at least as a minimum safety prerequisite to the restoration of the petrol ration to private vehicles, surface shelters, civil defence obstructions, dangerous defence points and road blocks, should be removed by the responsible authorities, and, if at all possible, pedestrian crossing places, with their beacons, should be restored to their pre-war standard. Unless such action is immediately taken, they greatly fear that the restoration of the petrol ration, particularly at a time when evacuated children will be flocking back to the bombed cities and towns, will have the effect of perpetuating the death and injury of the war years. The word " death-trap " is no exaggeration for the description of some of the obstructions on the road which the end of the war in Europe has rendered superfluous, and the prospective increase in road traffic has made dangerous. The only obligation of the road authority is to light them, but that does not dispose of the bottlenecks and blind corners which they create. Whether or not the restoration of the basic petrol ration is premature as the Association suggest, they are absolutely right in drawing attention to this imminent danger.

Drivers and Tests of Fitness

AMONG the recommendations in the recently published interim report of the Committee on Road Safety was the tightening up of the law as to driving tests, but on the question of general tests of fitness the committee stated that they thought it " undesirable that persons suffering from diseases and physical disabilities (other than those, e.g., epilepsy, which preclude the grant of a licence) should be able to obtain a provisional licence and drive for an indefinite period without being tested, as is at present the case." They promised further recommendations in a later report. In fact, as the writer in a number of recent articles in the *Practitioner* clearly indicates, the problem of fitness for driving covers a much wider field than physical disease and disability. It is pointed out that there is such a thing as " accident proneness," and that it is possible by careful tests to pick out persons who are more liable to be involved in accidents than others. It is recommended that such tests should be adopted so as to prevent " accident-prone " persons from driving motor vehicles. Students of the causes of accidents everywhere will find themselves in strong sympathy with this contention, and it is fully borne out by the reports of the Home Office on factory accidents, which have been published from time to time. It is also stated that drivers of public service vehicles have to pass a medical examination as to fitness, as well as a driving test, and it is urged by the writer of the articles that all new applicants for a driving licence for any sort of motor vehicle should be subject to this medical examination. A further suggestion which will meet with much support is that it should be assumed that if the ability of a driver is proved to have been lessened in any degree at all by the consumption of intoxicating liquor, he should be deemed to be " under the influence " of liquor, irrespective of what may be revealed on a medical examination or a blood test. This may raise difficulties of proof in the courts, as lawyers can well understand, but apparently a similar rule has been successfully applied in a number of States in the U.S.A. All these proposals accord with the finding both of the Alness Committee and of the present Departmental Committee that the remedies sought for the wholesale maiming and slaughter on the roads must be drastic in their character.

Law of Defamation

A PIECE of news which it is to be hoped will not go unnoticed amid the welter of events of the last week or two is the announcement that the committee appointed by the Lord Chancellor to consider the law of defamation is resuming its sittings, which were supended at the outbreak of war in 1939. Persons or organisations wishing to give evidence or to supplement evidence previously given should apply to the Secretary, Committee of the Law of Defamation, K innaird House, 1, Pall Mall East, S.W.1. The application should be accompanied by a memorandum summarising the evidence which it is desired to submit. The committee will then consider whether it wishes to hear the applicant or his witnesses orally. Among the outstanding questions for the committee, it may be guessed that the House of Lords decision in *Hulton* v. *Jones* [1910] A.C. 20, that thorn in the side of the newspaper Press, will take its place in the front rank. With regard to this case it will, no doubt, be borne in mind, that it merely laid down an old-established and proper legal principle, enunciated by COLERIDGE, L.C.J., in *Gibson* v. *Evans* (1889), 23 Q.B.D. 386: " It does not signify what the writer meant; the question is whether the alleged libel was so published by the defendant that the world would apply it to the plaintiff." Another question which demands an answer is whether pecuniary damages are the appropriate remedy when all that is at stake is the vindication of character. The law of fair comment requires further elucidation. Another big problem is that of community defamation, one of the chief weapons in the armoury of tyranny, and one against which many progressive States have enacted legal safeguards. The committee has a difficult and responsible task, but a safe forecast can be made that it will not lack assistance in testimony from the public.

Development by Authorities: Consent of Minister

SOME speeding up of development by local authorities may be achieved by the new Town and Country Planning (Development by Authorities) Regulations, 1945, dated 10th May, 1945, made by the Minister of Town and Country Planning under s. 32 of the Town and Country Planning Act, 1944 (S.R. & O., 1945, No. 532). The effect of the new order is that the consent of the Minister is no longer required for the carrying out by an authority of certain specified developments, among the most important of which are developments of any description permitted by a general interim development order, buildings incidental to dwelling-houses, layout and use of land for allotments, open spaces, school playing fields and public walks and pleasure grounds, and the erection of buildings incidental thereto and sewage disposal plant, and a number of less important matters. Furthermore, the consent of the Minister is not to be required in respect of the carrying out of certain other developments unless the Minister gives written notice to the authority requiring that an application for his consent shall be made in respect of the relevant development. If the authority notifies the Minister in writing of their intention to carry out any such development, the Minister is not to require an application for his consent in

respect of that development after the expiry of a month from the date of such notification. These developments are any other than those for which no consent is required, and include aerodromes, electricity generating stations, gas holders, gas works, including works for the manufacture or conversion of residual products, and water towers. The authorities affected are those empowered by an interim development order to permit the development of land, and authorities responsible for the enforcement of a planning scheme. In circular No. 17, issued by the Ministry on the same date, it is stated that the Minister's aim will be to exercise control only in those cases where the development, if carried out in an unsuitable position or in an unsatisfactory manner, is likely to be seriously objectionable, and he does not expect that he will find it necessary to intervene in more than a small proportion of cases.

Insurance of War Risks

THE recently published Parliamentary paper containing the Accounts of the War Risks (Commodities) Insurance Fund for each of the years ended March, 1941, 1942, 1943 and 1944, with the report of the Comptroller and Auditor-General, contain interesting figures with regard to those war years. In the twelve months ended 31st March, 1941, to which a balance of £21,886,884 was brought forward, the premiums, less refunds, were £43,414,925 and the claims were £30,849,292. For the next year premiums were £59,635,602 and claims £66,467,437. In the following year the premiums were £43,627,177 and claims £10,775,104. In the year ended March, 1944, premiums amounted to £20,175,841 and the claims to £2,915,403. In each year the receipts were increased by interest on investments and recoveries from salvage, and expenses had to be added to the outgoings. On 31st March, 1944, there was a balance in Treasury Bills and with the Paymaster-General, less outstanding orders, of £76,456,085. The fall in the premium receipts from £43,627,177, in the year ended March, 1943, to £20,175,841 in the year ended March, 1944, is stated to be due to the successive reductions in the rate of premium.

Licences for Building

THE Minister of Works recently gave particulars of how the new scheme to extend the £10 licensing scheme for building to the whole of England and Wales as from 1st August is to work. It is to operate for a period of six months, until 31st January, 1946. Until that date building work costing up to £10 may be undertaken without a licence, and two pounds' worth of work may be undertaken in each calendar month. No licence is required for emergency work, such as burst pipes, and the allowances will be applied to all separate dwellings individually. Owners of blocks of flats or offices may obtain maintenance licences for specified classes of repairs to cover a twelve months' period. Where an owner or occupier wishes to build, repair, adapt or convert a dwelling-house, at a cost exceeding £100, the local authority may certify that the work is essential and, on receipt of the certificate, the licensing officer of the Ministry of Works will normally grant a licence. In reckoning the amount of work which may be undertaken without a licence no account is to be taken of work licensed or authorised by a Government department or undertaken by a local authority (such as bomb damage repair), or work carried out before 1st August, 1945. The value of work and the cost of materials used by an owner or occupier on premises occupied wholly or partly as a private dwelling, with his own personal labour, or with unpaid labour, is to be disregarded. The Minister stated that the shortage of building labour was the factor which was going to determine the work which could be undertaken in the next eighteen months to two years.

Crime in the Metropolis

AN increase in the number of indictable offences is one of the main features noted in the report for 1944 of the Commissioner of Police for the Metropolis, issued on 15th May (Cmd. 6627, 9d. net). It states that analysis does not confirm that the causes of the rise are the large number of houses and shops damaged by blast, and the consequent ease of entry, for "the increases have been very irregular geographically, and on the whole, have been more marked in the areas which have suffered least from bombing." The most probable explanation is stated to be the prevailing demand for articles of general use, but in short supply. The total number of indictable crimes last year is put at 103,804, as compared with 95,280 in 1938, and 91,205 in 1943. The rise over the 1943 figures in burglary and housebreaking, and the various types of larceny, including larceny from dwelling-houses, was between 17 and 18 per cent. in each case, while that in shop and warehouse breaking was 47 per cent. The last-mentioned figure represents a reversal of the experience of 1943, when shopbreaking showed less increase than other kindred offences. There was a decrease by over 26 per cent. of thefts from vehicles over 1943. Cases of robbery and bag-snatching increased by 8 per cent. Looting offences from war-damaged properties numbered 4,584 in 1940, 5,483 in 1941 and 6,007 in 1944. There is no reliable evidence, states the report, of a vast central black market organisation, but it may be a true picture, and the police authorities would be grateful for any evidence on which they could take action. There had been a drop in the number of arrests of juveniles, owing to evacuation, but the number was still much higher than in pre-war years and the age groups 15–18 showed the worst results.

Law and Common Sense

DR. F. J. O. CODDINGTON, the Bradford Stipendiary Magistrate, seems to have unwillingly incurred the displeasure of some of his lay colleagues on the bench on account of a remark made by him in the course of a *Yorkshire Post* article to which we have previously referred (*ante*, p. 228). The remark was: "Common sense is essentially a legal method of thought, and any common law advocate has more common-sense in his little finger than a dozen business men rolled in one." In a later article in the *Yorkshire Post* of 11th May, Dr. Coddington explained that there was no need for any lay magistrate who happened to be a business man to take umbrage, as in the same article he described lay magistrates as "shrewd, conscientious and anxious to do their best." The attack, said Dr. Coddington, was not on magistrates who happen to be business men, but on some business men who are not magistrates and have not undergone the education of the Law Courts. "Even those business men should realise," he wrote, "(most of them did), that the ludicrous exaggeration of the attack indicated that it was mostly fun, written to arouse amused discussion." Exaggerated or not, Dr. Coddington's expression of opinion has the best precedents. "Reason," said Sir Edward Coke, "is the life of the law." Another authority long ago had it that law was but organised common-sense. Disraeli disdained the work of a barrister because it consisted in explaining and illustrating the obvious, but the word "obvious" is relative, and what is "obvious" to a Disraeli is not necessarily obvious to the butcher and the baker. The law may not be the true embodiment of everything that's excellent, as Gilbert put it, nor may it have "no kind of fault or flaw," but it enables those who are trained in its science to discern more rapidly than others the probabilities hidden behind the evidence and to make them apparent and obvious at once to untrained juries, and, we are emboldened to say, to lay magistrates.

Recent Decision

In *R.* v. *Darry*, the Court of Criminal Appeal (HUMPHREYS, OLIVER and BIRKETT, JJ.), on 16th May (*The Times*, 22nd May), held that there was no illegality in imposing on a person convicted of several offences sentences which were to run consecutively, and which resulted in a total sentence of more than two years' imprisonment, but that it was the practice of the court in such cases to apply s. 1 of the Penal Servitude Act, 1926, and alter the sentence in a proper case. In the case under review the court substituted a sentence of three years' penal servitude for sentences of eighteen months', nine months, and nine months' imprisonment to run consecutively.

THE ENFORCEMENT OF HIGH COURT JUDGMENTS

(CONTRIBUTED)

THE object of this article is to draw attention to certain defects in the present system of enforcing judgments, particularly in the High Court, which it is suggested require to be remedied as a matter of urgent importance, not only to the profession but to the public at large. In the absence of any available data it is not possible to form even an approximate estimate of the extent to which High Court judgments remain unsatisfied, but from conversations with professional brethren the writer is satisfied that a very real evil exists, the blame for which a dissatisfied public places on the shoulders of solicitors.

It will not, perhaps, be inappropriate in the first place to point to the continued ineffectual administration of the Registration of Business Names Act. It is agreed on all hands that the registry is seldom of use in tracing the responsible owner of a fraudulently conducted business. No one appears to be charged with the duty of enforcing registration, and to a large extent the Act remains a dead letter and a mere means of extracting fees from honest traders for the support of officials, whilst the dishonest go on their way unscathed. It is interesting to note that in some few instances the Act proves useful to defendants, who it will be remembered can secure a non-suit against a plaintiff firm who may quite innocently have failed to register.

There is something rather pathetic in the serene atmosphere of a British court of justice. Grave issues to litigants are solemnly argued by learned counsel and finally judgment is given. Everyone heaves a sigh of relief. Right has triumphed, justice has been done and retribution has overtaken the wicked and not infrequently fraudulent defendant. How different the picture which presents itself to the successful party's solicitor and his clerks. The real trouble is often only just beginning. Is the defendant's passport automatically confiscated and steps taken to prevent him leaving the country? By no means. There is nothing to prevent an astute defendant who has taken the precaution of maintaining his assets in liquid and readily portable form, from leaving by the night sleeper for the Continent and thus passing into the mists of foreign parts. Some years ago one of His Majesty's judges recounted to the writer a highly diverting story which ended on the quay at Dover. A writ *ne exeat regno* having been directed by the judge to issue against an absconding debtor, the solicitor's clerk pursued him to Dover, but on producing his writ to the solitary constable on duty at the Marine station, found himself quite unable to convince that legal luminary that the document had not been forged; with the result that the clerk had to submit to the mortification of watching his quarry cocking snooks at him from the boat deck as the boat disappeared into the Channel. It was useless for the clerk to urge that there had been no time to instruct the sheriff, that the sheriff had no means of identifying the absconding debtor, and that it was by no means clear which sheriff would have agreed to move in the matter.

But let us suppose that the debtor's financial "health" does not call for treatment abroad. Some weeks, possibly months, must elapse whilst the successful party's costs are taxed. In many instances a mobile defendant has not, in the meantime, been idle, and the successful litigant must then make up his mind as to what course he will adopt. First, he may take out a summons to have the defendant examined on oath under Ord. 42, r. 32, of the Rules of the Supreme Court; second, he may put the sheriff in; third, he may proceed in bankruptcy; fourth, he may apply for the appointment of a receiver by way of equitable execution; and last he may take garnishee proceedings. All very high sounding remedies and most encouraging to the layman, who leaves his solicitor's office confident that it must prove impossible for his debtor to slip through the elaborate legal network provided by a beneficent legal machine. First, then, let him proceed under Ord. 42, r. 32. This is in the nature of a "fishing" expedition. "What rent is the defendant paying?" He doesn't know. The lease is in his wife's name. "Surely he has a bank account?" No. His daughter has a bank account but he does not know whether it is in debit or credit, and so on. I am told by an experienced county court official that he has never known any useful information extracted on a summons under Ord. 42, r. 32. In any event further delay must ensue and expense be incurred. The successful plaintiff has no means of ascertaining whether he stands alone or whether there are other judgments outstanding unless, of course, some other creditor has already filed a bankruptcy petition. Nothing daunted, therefore, the judgment creditor decides to levy execution. A writ of *fi. fa.* is issued, and the sheriff, after laborious investigation and some delay, duly returns *nulla bona*, having been informed that the flat in which the debtor resides stands in the wife's name and the furniture all belongs to the wife or some third party. Alternatively, the sheriff, on reaching the flat, finds it closed and the defendant moved into another jurisdiction. Why, the client asks, has not the sheriff seized the contents of the defendant's desk or safe, which would disclose where his bank balance, investments, bonds or other assets are hidden? That would be too easy. The sheriff's duty is to seize the "goods" of the defendant. Only the Official Receiver in Bankruptcy can investigate the defendant's investments, though it is explained to the client that, if he can ascertain what investments the defendant owns, he might be able to secure the appointment of a receiver by way of equitable execution. The client replies that unfortunately the judgment debtor left the court without giving him the name of his bankers or details of his securities.

At this juncture it is learned by chance that the defendant is possessed of a freehold house. Recollections of student days conjure up the words "writ of elegit." The solicitor practising in the country writes to his London agents inquiring whether this procedure can be adopted. Bedford Row is thrown into what I believe is now known as a "flat spin." It is learned that grave difficulties and much expense lie ahead if this archaic procedure is resorted to. The sheriff says that the only clerk who was conversant with the procedure died thirty years ago, and he himself is very uncertain as to how he should proceed. However the point is pressed, and ultimately, after much searching of precedents, the writ issues, the sheriff convenes a jury of "twelve honest and lawful men of the county," an inquisition is held (price £8 3s. or thereabouts), and it is duly found that the defendant is possessed of "a freehold house of the clear yearly value of £*x* in all issues beyond reprizes." The jurors (though with what right I know not) further find that "the defendant has not any other or more land or tenements nor any rectories, tithes, rents or hereditaments in the county aforesaid." In the result the triumphant judgment creditor emerges as tenant by elegit. Does this put him in a position to sell the property and thus reimburse himself his expenses? By no means. He must apply for an order for sale, or alternatively commence a further action for ejectment of the occupant. By this time the defendant has, of course, sold the property to a purchaser without notice, and still further complications ensue. The proceedings are abandoned. One solicitor recently endeavoured to enforce a judgment debt for £205 by means of writ of elegit. No less than 131 letters passed in the matter. The taxed costs and disbursements amounted to £53 odd and the proceedings, extending over many weeks, proved abortive.

It is noteworthy that as long ago as 1935 the Council of The Law Society adopted a resolution to the effect that in their opinion proceedings by writ of elegit were cumbrous and recommended that representations be made to the Lord Chancellor that at a suitable opportunity the present procedure should be considered, with a suggestion that the sheriff's inquiry might be abolished.

Although recommendations were made to the Lord Chancellor at that time nothing so far as I can ascertain has yet been done.

By a side wind it is learned that the defendant has a bank account. Thereupon garnishee proceedings are commenced. Once again defeat awaits the judgment creditor, since it emerges that the bank balance is in the joint names of the debtor and his wife, and it proves to be quite beyond the wit of the court to say what proportion of the bank account is the defendant's and what proportion the property of the wife (*Hirschorn* v. *Evans* [1938] 2 K.B. 801). Incidentally you learn the police are now looking for the debtor on a criminal charge, but they decline to co-operate since the chief constable points out that by so doing he would be lending you the support of the criminal law in pursuit of your civil remedies.

By this time the long vacation approaches. A heavy bill and large disbursements have already been incurred, but bankruptcy still appears available. A bankruptcy notice as a preliminary to petition is prepared, which (with the object presumably of giving the defendant more time to cover his tracks) the rules provide must be served personally. The defendant has changed his name and left without leaving an address. Although he may have arranged with the Post Office to forward his letters, the Post Office resolutely decline to divulge this information. Grave delay is encountered in serving the bankruptcy notice. In one case which recently came under my notice so much time was occupied by preliminary formalities and adjournments, due largely to the long vacation, that the defendant was able to gain access to his office and remove (and presumably burn) the whole of his papers, with the result that the subsequent bankruptcy proceedings threw but little light on his tortuous activities. Ultimately the Bankruptcy Court is reached, only to find that another creditor has placed a petition on the file a few days earlier. Delay occurs in securing an appointment before the registrar. The prior petition is adjourned, possibly two months elapse before adjudication, and so the farce goes on. Who do the public blame but the solicitor, who not only advised his aggrieved client to fight the action, but had the temerity to go further and advise him to endeavour to enforce his judgment.

Now what is the remedy? The whole system dates back to mediæval times. Separate property of the wife, residential hotels, furnished flats, hire-purchase, were all unknown. Modern means of transport, ready realisation and transfer of securities through the Stock Exchange, banks with rapid transfer of assets abroad, were all equally unknown. The sheriff and all his works are, in the writer's submission, a useless anachronism. Much as one dislikes the formation of a new Government department, the proper course would, it is suggested, be the amalgamation of the various sheriffs' and official receivers' departments, with jurisdiction in both High Court and County Court matters throughout the country irrespective of counties.

Immediately upon the entry of judgment (and without waiting for taxation of costs) the court itself should, if requested so to do, undertake the enforcement of the judgment. The defendant's passport should be withdrawn and the judgment, on the application of the creditor, be registered and thereon should operate as an order *ne exeat regno*. The department should seize the defendant's bank book, securities and papers (if necessary with the assistance of the police) and full disclosure of the defendant's position should be officially enforced.

Appropriate safeguards would, of course, have to be provided in cases where an appeal was pending, subject to adequate security being given, and the protection afforded to assets alleged to be the property of the wife and other near relatives should be strictly limited.

So long as the present system is allowed to remain, an honest but unfortunate debtor is fair game for the officers of the law. A dishonest and fraudulent debtor can in a large percentage of cases, it is believed does, succeed in evading his creditor. The public blame the legal profession for the present inefficiency of the system, and it is only by pressing for reform that solicitors can, in many cases, conscientiously advise their clients to go to law, particularly when they know they are dealing with a dishonest and elusive defendant with no permanent residence and no permanent place of business.

The writer has little doubt that this proposal will be criticised as vindictive and un-English. It must be remembered that no inconsiderable proportion of litigants to-day are not of British birth and have no British tradition behind them.

As a first step, and in order to obtain the necessary data, the Council of The Law Society might circularise the profession (if necessary through the *Law Society's Gazette* and legal papers) inviting details of cases where clients have been unable to enforce judgments, particularly where there has been strong reason to suppose that assets have been hidden. Armed with the material which would thus be disclosed, the Council could go to the Lord Chancellor and very strongly press some measure of reform such as this article suggests is necessary.

[This article was written in 1939. It will be generally agreed that the introduction of war-time legislation has not smoothed the path of the plaintiff seeking to enforce his legal remedies.]

A CONVEYANCER'S DIARY

UNWILLING TRUSTEES

Cases sometimes arise where the conduct of a trust reaches deadlock owing to the refusal of one trustee to take any action at all. In such a case the person, if any, " nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust," may " by writing, appoint one or more persons (whether or not being the persons exercising the power) to be a trustee or trustees in place of the trustee so . . . refusing . . . as aforesaid " (Trustee Act, s. 36 (1)). In favour of a purchaser of a legal estate any vesting declaration consequent upon such an appointment is valid, and a statement in any instrument executed after 1925 appointing a trustee of land to the effect that a trustee has refused to act is, in favour of a purchaser, conclusive evidence of the matter stated (Trustee Act, s. 38 (1)). Internally to the trust, the instrument of appointment is no doubt theoretically not conclusive as to the refusal to act and the efficacy of the consequent action, but a trustee who has in fact been passive for any considerable time is not likely to take proceedings to reverse his own ouster.

Where no person is nominated by the trust instrument to appoint new trustees, the powers stated above belong to the continuing trustees or trustee, and, so long as there are at least two trustees, including the delinquent, the position is easy. But in none of those cases would it be at all easy to establish a case for claiming the costs of the appointment from the dismissed trustee. If he had expressed a wish to retire from the trusts and his wish had been acceptable to the appointor or the other trustees, they would have proceeded in the same way and the costs would have fallen on the estate. If, then, his wish to retire is merely to be implied from his plain desire not to be troubled, it seems difficult to shift the costs to him: for the other trustees or the appointor show, by their act in removing him, that they are willing to accept the resignation impliedly tendered.

But if the troublesome trustee is a sole trustee, and if there is no nominated person to make the appointment, things are much more difficult. It is necessary to ask the court to appoint a substitute, since s. 36 is inapplicable. The power to be invoked is that contained in s. 41 (1) of the Trustee Act, which is as follows: " The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition

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* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a lunatic or a defective, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved." The list of particular things to be done or suffered by the delinquent trustee is superficially quite different under this section from that under s. 36: on closer inspection they are seen to correspond fairly well. The lunatic or defective of s. 41 is covered by the words " is incapable of acting therein " in s. 36. The dissolved corporation in s. 41 (but not the corporation in liquidation) is brought within s. 36 by subs. (3) of that section, and there are other overlappings. But the case of a trustee refusing to act has to be got within the general words of the first sentence of s. 41 (1). Before moving, therefore, the beneficiaries who seek the court's aid in removing such a trustee must be in the possession of reasonably sound evidence of refusal and must be ready to put it into the form of affidavits, with or without exhibits. The making of an order under s. 41 is not itself enough, since such an order has no vesting effect. The originating summons should therefore ask for a vesting order of any land comprised in the trust, under s. 44 (i), and for a similar order relating to stock under s. 51 (1) (i). Such a proceeding is a good deal more expensive than would have been the voluntary retirement of the recusant trustee, following an appointment by him of successors, under s. 36, and it would seem desirable that the summons should ask that he be made to pay at least the excess costs, if not all the costs. I have recently seen a case where the court ordered that all the costs should be primarily borne by the dismissed trustee's beneficial interest in the estate.

Another sort of difficulty arises where a sole surviving trustee dies and the trust, with the legal estate in the trust assets, devolves on his personal representatives under Trustee Act, s. 18 If such persons happen to be interested in the trust, it is purely due to chance: they may even be creditors of the trustee taking a grant of letters of administration. Under s. 18 (2) such personal representatives " until the appointment of new trustees " are to be " capable of exercising or performing any power which was . . . capable of being exercised by the sole surviving . . . trustee." The personal representatives are mere caretakers, as the current jargon has it. They are not trustees at all, but, if necessary, can do what a trustee could do, until a trustee is appointed. Thus, if there is a person nominated by the trust instrument to appoint trustees, he can do so at once under s. 36, one of the cases in which that section applies being " where a trustee . . . is dead." The personal representatives are not even necessary parties to such a document (*Re Routledge* [1909] 1 Ch. 280). If there is no nominated appointor, then the caretakers themselves can exercise the powers of s. 36 and appoint their own successors, that being a " power . . . which was . . . capable of being exercised by, the sole . . . surviving . . . trustee " within s. 18 (2). But they are entitled to remain completely passive and to decline to accept any trust or powers at all (see *Re Benett* [1906] 1 Ch. 216). It appears to follow from the last case (which actually concerned a right of retainer) that even if the caretakers refuse to act at all, and so force the beneficiaries to go to the court to get new trustees appointed, they cannot be ordered to pay the costs (and, indeed, in view of *Re Routledge*, they would be unnecessary parties). Thus it will certainly pay any beneficiaries who are confronted with a caretaker who declines to move at all to promise him a complete indemnity for his costs of making an appointment of new trustees. If necessary, such an assurance would often be worth the beneficiaries' while to give without qualification, in order to induce the unwilling caretaker to act. But in any case those costs, being costs of the trust and not a charge on the caretaker's deceased's estate, must be raised and paid by the new trustees at the earliest opportunity. This last point is worth emphasis: an executor of a more or less insolvent estate may well find himself interjected into the affairs of some quite different trust. Sometimes he fears that he will have to spend some of what little he has in his estate on the business of that trust, hence he tries to do nothing and so manœuvres himself into a position of unhelpfulness for which he has no real wish.

An assurance of an indemnity given at the outset would be calculated to prevent such a situation arising, and the giver is really safe (unless the trust itself is almost defunct) because the costs must come out of the trust fund eventually.

LANDLORD AND TENANT NOTEBOOK

STANDARD RENT OF HOUSE FORMERLY LET IN FLATS

THERE is " lend-lease in reverse," but no apportionment in reverse; that is, shortly, the lesson of *Vaughan* v. *Shaw* (1945), 61 T.L.R. 361 (C.A.). The owner of a house let it as two flats some time after 1932. In 1941 the tenants having left, he let the house at a rent much less than the aggregate of the two sums formerly paid. (The neighbourhood was then a much-bombed one; and it apparently did not occur to the landlord to ask a high rent for the first week.) Recently he took out a summons applying to have the standard rent fixed and contended that it was the sum of the rents formerly received. The county court agreed, but the decision has now been reversed.

The reasoning of the appellate tribunal was as follows: First, what is the definition of " standard rent "? The answer, in the case of a house brought within control by the 1939 Act, is to be found in s. 12 (1) of the Act of 1920 as applied by the more recent enactment, the result being " in the case of a dwelling-house which was first let after 1st September, 1939, the rent at which it was first let." Secondly, what is a dwelling-house? Section 7 (1) of the 1939 Act refers us to the Act of 1933, of which s. 16 runs: " Dwelling-house has the same meaning as in the principal Acts, that is to say, a house let as a separate dwelling or a part of a house being a part so let." Finally, was the house one which was let on, or one which was first let after, 1st September, 1939? In view of the definition, it was one first let after the date named. A letting of two separate parts of a house was not a letting of a house.

The mistake made by the county court judge was, according to MacKinnon, L.J., the inference drawn from the fact that s. 12 (2) of the 1920 Act (" this Act shall apply to a house or a part of a house let as a separate dwelling ") was not incorporated in the Act of 1939, coupled with the omission to notice that s. 16 of the 1933 Act (" ' dwelling-house ' has the same meaning as in the principal Acts, that is to say, a house let as a separate dwelling or part of a house being a part so let ") *is* adopted by the 1939 statute, s. 7 (1) of which runs: " Other expressions have the same meanings as in the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933." In effect, there were three lettings, each fixing a standard rent of its own.

This seems plausible, but one cannot help wondering whether the same inference and omission might not have had something to do with the same judge's decision in *Neale* v. *Del Soto* [1945] 1 K.B. 144 (C.A.), which was *upheld* by the Court of Appeal. That was a case which decided (see 89 SOL. J. 130) that the letting of two unfurnished rooms with the use jointly with the landlord of kitchen, garage, lavatory, coal-house, etc., was not the letting of a separate dwelling; a decision which caused the Ridley Committee to raise official eyebrows (see para. 111 of the Ridley Report and 89 SOL. J. 209) and has had a disturbing influence in another recent case, *Sharpe* v. *Nicholls* (to be reviewed later). The report of *Neale* v. *Del Soto* shows, however, that there was no such inference; indeed, if there was an omission to notice anything that time, it was the fact that s. 12 (2) of the 1920 Act was

not incorporated in the 1939 Act! The only explanation which would reconcile the two proceedings would be that *Neale* v. *Del Soto* was an "old control" case; it will be observed, however, that s. 12 (2) of the 1920 Act is not strictly concerned with definition, that it left some doubt surrounding the question whether the words "let as a separate dwelling" qualified the word "house" as well as the words "a part of a house," and that s. 16 (1) of the 1933 Act removed this doubt.

From the concluding observations in the judgment of Morton, L.J., it is evident that the question of apportionment was mentioned: it appears to have been suggested that if the standard rent was not the aggregate of the two figures and the house was at some future date let in separate flats again, the two tenants would each claim that his standard rent was an apportioned part of the standard rent of the whole building as determined by the 1941 letting, while the landlord would insist that the figures reserved by the old lettings were the standard rents.

As to the hypothetical tenants contention, it will be remembered that before the passing of the Increase of Rent, etc., Act, 1938, if part of a house was let separately when control was imposed, that letting fixed the standard rent of that part, and apportionment was not "necessary" within the meaning of s. 12 (3) of the 1920 Act, which provides for apportionment. This was implicit in the decision in *Platman* v. *Frohman* [1929] 1 K.B. 376. But s. 5 of the 1938 Act expressly extended the operation of s. 12 (3) of the 1920 Act to such cases, and by virtue of this amendment the new tenants would be entitled to have their rents fixed at figures which would add up to the amount reserved by the 1941 letting of the whole house. While the landlord's claim would rest simply on the definition of "standard rent": the properties were first let soon after 1932.

Morton, L.J., was content to observe that it was not necessary to decide the point and that the case was difficult enough as it stood without importing into it questions which might never arise. Possibly new legislation will prevent it from ever arising, but I am sorry the point was not pursued, for there does seem to be much force in the argument that if $x - a = b$, then $a + b = x$.

All three lords justices rather emphasised the word "separate" in the definition of "dwelling-house" provided by s. 16 (1) of the 1933 Act: a house let as a separate dwelling or part of a house so let. "The house was let as a separate dwelling when it was let to him [the appellant] the first time as a *separate* dwelling in January, 1941"; "the whole of the premises was not let as a *separate* dwelling on 1st September, 1939. It was first let afterwards"; and "up to that date there was no letting of this dwelling-house *by itself*." I have already suggested that the definition was supplied in order to make it clear that the Acts concern realty let as dwellings, regardless of the consideration whether a whole or part of a building is so let, and my criticism of the reasoning would be that "separate" does not apply to the occasion of the letting, but rather to the physical subject-matter: the true function of the adjective being to emphasise that the Acts apply not only to ordinary residential houses and to ordinary residential flats, but also to a flat or a maisonette in a building the rest of which is let for business purposes.

COMMON LAW COMMENTARY

FALLING TREES

THERE is a duty upon the owners of trees to ensure that their condition does not become so dangerous that they fall and create a nuisance on the highway, but the owners are not liable if the condition could not have been detected even by the use of reasonable care.

In *Cunliffe* v. *Bankes* [1945] 1 All E.R. 459, a diseased tree fell upon a highway, resulting in fatal injuries to a motor-cyclist. It was found that the defendant had taken all reasonable steps to ascertain the condition of the tree and was therefore not liable in negligence or nuisance. But Singleton, J., said: "Those who have property of this kind have to realise that there is a duty to the public."

It was held in *Noble* v. *Harrison* [1926] 2 K.B. 332, that the principle of *Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330 (liability for dangerous things brought on land) did not apply to a tree because a tree was not in itself a dangerous thing, and growing trees was one of the natural uses of the soil.

In *Bruce* v. *Caulfield* (1918), 34 T.L.R. 204, a tree blew down and did damage to a neighbour's property. There being no evidence of decay, there was no evidence of negligence.

DEFAMATION: PROCEEDINGS BEFORE A MEDICAL REFEREE NOT ABSOLUTELY PRIVILEGED

Every statement made in the course of judicial proceedings is absolutely privileged, and no action will lie however false and malicious such statement may have been. According to Fraser on "Libel and Slander," this privilege is confined to statements made in the course of strictly judicial proceedings and will not be extended. A Court of Referees constituted by the Unemployment Insurance Act, 1920, has been held not to be a judicial tribunal for this purpose, and in *Smith* v. *National Meter Co., Ltd., and Gibson* (1945), 61 T.L.R. 366, proceedings before a medical referee appointed under the Workmen's Compensation Act were likewise excluded.

The test was laid down by Lord Esher, M.R., in *Royal Aquarium and Summer and Winter Garden Society, Ltd.* v. *Parkinson* [1892] 1 Q.B., at p. 442: were the proceedings "an authorised inquiry before a tribunal acting judicially—that is to say, in a manner as nearly as possible similar to that in which a court of justice acts in respect of an inquiry before it"? The medical referee is not bound by the strict rules of evidence; and he is essentially determining medical facts on his own professional judgment and skill. The statement made by each party to the referee is unknown to the other party.

The occasion would have been one of qualified privilege had there been no malice on the part of the defendants. Qualified privilege was defined by the court, in *Toogood* v. *Spyring* (1834), 1 C.M. & R. 193, as ". . . fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned."

CONCLUSIVE OPINION OF A MEDICAL REFEREE

Paragraph (3) of the Workmen's Compensation (Industrial Diseases) Consolidation Order, 1929, amended by para. (1) of the Workmen's Compensation (Cataract) Order, 1932, provided that the sufferer should not be entitled to compensation for more than four months unless he had undergone an operation for cataract, provided that "where the judge is satisfied on the advice of the medical referee that an operation could not for medical reasons be performed within four months from the date of disablement, compensation may be continued for such further period . . . as the judge . . . may direct."

In *Green* v. *Samuel Woodhouse & Sons* (1945), 61 T.L.R. 365, the workman called medical evidence which the judge preferred to that of the medical referee. But the Court of Appeal (MacKinnon, Lawrence and Morton, L.JJ.) construed the paragraph as meaning that the judge may consider no medical evidence other than that of the referee.

It is interesting to contrast a medical referee acting as such with a medical referee acting as assessor.

Section 5 of Sched. I of the Workmen's Compensation Act, 1925, provides that the judge may (and sometimes must) summon a medical referee to sit with him as assessor. The functions of such an assessor were authoritatively set out in *Richardson* v. *Redpath, Brown & Co., Ltd.* [1944] A.C. 62. He is an expert, available to help the judge to understand

the effect and meaning of medical evidence. The judge is not bound by the assessor's advice (*Pinsey* v. *Gwynnes* (1918), 11 B.W.C.C. 124), and must disregard it if it conflicts with all the evidence (*Booth* v. *Carter* (1915), 8 B.W.C.C. 106).

In *Ancrum* v. *Co-operative Wholesale Society, Ltd.* (1945), 172 L.T.R. 248, the county court judge said (according to counsel's note) " but for the assistance which I have had from the medical assessor, I would have found for the applicant." Scott, L.J., inferred from the note that the judge was substituting the mind of the medical assessor for his own. Lawrence, L.J., said that the judge was not bound to accept the advice of the medical assessor in preference to the sworn evidence of the medical witnesses. Morton, L.J., inferred that the judge had asked the assessor whether it was " possible to connect the death of the deceased with the accident," and doubted whether it was a question which the judge ought to have asked, though this doubt was *obiter*. A new trial was ordered.

A medical assessor is not, of course, a witness, and cannot be cross-examined.

TO-DAY AND YESTERDAY

LEGAL CALENDAR

May 28.—On the 28th May, 1661, Pepys noted: " With Mr. Shepley to the Exchange about business, and there, by Mr. Rawlinson's favour, got into a balcone over against the Exchange; and there saw the hangman burn, by vote of Parliament, two old Acts, the one for constituting us a Commonwealth and the other I have forgot." On the same day in Westminster Hall the hangman burnt the Act setting up the High Court of Justice to try Charles I.

May 29.—On the 29th May, 1663, Pepys recorded: " With Creed to see the German Princess at the Gate-house at Westminster." This was Mary Carleton born in modest circumstances in Canterbury and married to a shoemaker from whom she ran away to marry a surgeon in Dover. Afterwards she travelled abroad, returning to carry on an elaborate and highly successful imposture as a German Princess, in which character she married a credulous young Londoner. Her previous history having come out, she was arrested and it was during her imprisonment that Pepys saw her. On her trial for bigamy she conducted herself so skilfully that she was acquitted. The remaining ten years of her life were one long series of highly ingenious frauds, impostures and confidence tricks, till she was hanged at last.

May 30.—On the 30th May, 1654, Richard Newdigate, Hugh Wyndham and Richard Pepys became judges against their will. Cromwell was Protector, and they at first declined to act under his commission, and when summoned to his presence expressed their doubts. But he said: " If I cannot rule by red gowns I will rule by red coats," and, dreading the consequences of refusal, they agreed to act.

May 31.—On the 31st May, 1663, Pepys noted the " heat that Parliament is in in inquiring into the revenue . . . Their inquiring into the selling of places do trouble a great many; among the chief my Lord Chancellor, against whom particularly it is carried, and Mr. Coventry; for which I am sorry." It was nearly four years before Lord Clarendon's enemies prevailed and he was driven into exile.

June 1.—By a statute of George I (9 Geo. I, c. 22) it was enacted that if after the 1st June, 1723, any person or persons armed with offensive weapons and having their faces blacked, or being otherwise disguised, " shall appear in any forest, chase, park . . . or in any high road, open heath, common or down, or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, or unlawfully rob any warren . . . or steal or take away any fish out of any river or pond," or if any person or persons after the 1st June, 1723, " shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed, or shall unlawfully and maliciously kill, maim, or wound any cattle, or cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter or profit; or shall set fire to any house, barn or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay or wood; or shall wilfully and maliciously shoot at any person in any dwelling-house or other place; or shall knowingly send any letter without any name subscribed thereto or signed with a fictitious name, demanding money, venison or other valuable thing; or shall forcibly rescue any person being lawfully in custody . . . for any of the offences before mentioned; or if any person or persons shall by gift or promise of money, or other reward procure any of His Majesty's subjects to join him or them in any such unlawful act; every person so offending shall suffer death . . ."

June 2.—Sir Henry Vane, the younger, though desiring the maintenance of the monarchy and the constitution, took the Parliamentary side in the Civil War and held high office under the Commonwealth. At the Restoration he was arrested, although he had had no share in the execution of Charles I, and on the 2nd June, 1662, he appeared before the Court of King's Bench to answer a charge of high treason. In his defence, which he conducted boldly and skilfully, he pleaded that he had only obeyed the *de facto* government, but he was found guilty and executed.

June 3.—On the 3rd June, 1663, Pepys, considering the trouble in which Mr. Coventry was involved, recorded: " I to my office and there read all the morning in my statute book, consulting among others the statute against selling of offices, wherein Mr. Coventry is so much concerned; and though he tells me that the statute do not reach him, yet I much fear that it will."

The Abbey and the Minor

The " Abbey " enticement suit which has just been decided by Mr. Justice Cassels in favour of the parents of " Sister Terese," recalls a somewhat similar case in 1873. Joseph Leycester Lyne, or " Father Ignatius," as he called himself, was then at the height of his extraordinary career of missionary effort to establish monasticism in the Church of England, combining the profession of a cloistered monk with the activities of a wandering friar. His composite robes combined features of the habits of many religious orders, and his dominating personality and evangelistic eloquence made a considerable stir even in that Victorian England where " personalities " flourished and the pre-fabricated human being was undreamt of. The monastery he built on the Welsh border in a remote valley in the Black Mountains is still inhabited, though his order vanished on his death in 1908. Thither at different times came many novices aspiring to be monks, but there was trouble over " Brother Aelred," known in the world as Richard Alfred Todd. His well-to-do parents took the conventional step of establishing him as a ward in Chancery, and Father Ignatius was summoned to answer before Vice-Chancellor Malins for detaining the minor.

The Monk and the Law

The case excited immense popular interest, mingled with a certain amount of violent hostility to Father Ignatius, whose own mother insisted on being present, the judge putting his private room at her disposal. The court was crammed. " Every wig and gown in England seemed to have turned up for the occasion, but the concourse within doors was nothing to the mob which had gradually been gathering at the entrance and far down the thoroughfares leading to the court for several hours before the approach of the monk could be reasonably expected." He was greeted by groans and hisses and counter-cries and cheers of encouragement. He " had no reason to complain of discourtesy on the part of the Vice-Chancellor but from the outset the

case was firmly held within the limitations of a breach of the national law . . . In the eyes of the court, the reverend father was merely a certain 'Mr. Lyne,' who had detained a legal infant and ward of Chancery in his house against the wishes of his parents." His monastic arguments in justification of having received the boy into the novitiate proved as irrelevant as those of Strephon before Gilbert's Lord Chancellor, and though he "waxed eloquent," the judge "evinced a marked distaste for a tilt between Wig and Tonsure." An injunction was granted ordering him to refrain from any further communication with "Brother Aelred." Outside the court there was almost a riot and he narrowly escaped violent personal assault. Back in the monastery the community prayed daily for the eventual return of the young brother and adorned his empty stall with flowers, but when his minority was over he went to the Scottish bar.

NOTES OF CASES

HOUSE OF LORDS

Inland Revenue Commissioners *v.* **Bibby & Sons, Ltd.**

Lord Russell of Killowen, Lord Macmillan, Lord Wright, Lord Porter and Lord Simonds. 17th May, 1945

Revenue—Excess profits tax—Controlling interest of directors in company—Controlling interest necessary in order to claim statutory 10 per cent. instead of 8 per cent. of the increase of capital to be added to standard profits—Directors no controlling interest unless shares of certain directors held as trustees of settlement included in the number of shares giving control—Distinction between active trustees and bare trustees—Shares of active trustees capable of qualifying them for control—Finance (No. 2) Act, 1939 (2 & 3 Geo. 6, c. 109), s. 13 (3), (9).

Appeal from the Court of Appeal (88 Sol. J. 332).

This was an appeal of the Crown from a decision of the Court of Appeal that the directors of the company had "a controlling interest" therein within the meaning of s. 13 (9) of the Finance (No. 2) Act, 1939. The proviso to s. 13 (3) of the Act provides: ". . . if the average amount of the capital employed in the trade or business in any chargeable accounting period is greater or less than the average amount employed therein in the standard period, the standard profits for a full year shall in relation to that chargeable accounting period be increased, or, as the case may be, decreased by the statutory percentage of the increase or decrease in the average amount of the capital employed . . ." By s. 13 (9), : "the expression 'statutory percentage' means—(*a*) in relation to a trade or business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein) 8 per cent.; (*b*) in relation to a trade or business not so carried on 10 per cent." The average capital employed by the company during the chargeable accounting period was greater than the average amount thereof in the standard period, and therefore the company was entitled under s. 13 (3) to add the statutory percentage defined in s. 13 (9) to the standard profits of a full year. The question was whether the directors had a controlling interest within the meaning of s. 13 (9), so as to qualify the company for the statutory percentage of 10 per cent. Some of the directors held beneficially 209,332 of the 500,000 ordinary shares of the company and three of the directors held as trustees of a marriage settlement 57,500 other ordinary shares. They had under the settlement a contingent interest in the shares. The Crown contended, and Macnaghten, J., accepted the contention, that, as the 57,500 shares were held by the directors only as trustees and not beneficially, their holding thereof for the purposes of giving control over the company had not the effect of causing the total number of shares held by the directors to be more than 50 per cent. of the ordinary shares, and therefore the directors had not the necessary control of the company. The Court of Appeal reversed his decision. The Crown appealed.

Lord Russell of Killowen said that the test which was to exclude a company's business from subs. (9) (*a*) and include it in subs. (9) (*b*) was the voting power of its directors, not their beneficial interest in the company. For the purpose of such a test, the fact that a vote carrying share was vested in a director as trustee was immaterial. The power was there, and though it were exercised in breach of trust, or even in breach of an injunction, the vote would be validly cast *vis-a-vis* the company, and the resolution until rescinded would be binding upon it. It was suggested for the appellants that shares registered in the name of a director, but held by him as trustee, might be included in reckoning the controlling interest in cases where the trustee had also what was described as a predominating beneficial interest in the shares. He was unable to see how the existence in the trustees of any beneficial interest could affect the question of control. The words "controlling interest" meant "controlling voting power," that was the interest in view, not beneficial interest. He preferred to express no opinion as to the position of a director who was a bare trustee. The appeal should be dismissed.

The other noble and learned lords agreed in dismissing the appeal.

Counsel: *The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), *J. H. Stamp* and *R. P. Hills*; *Millard Tucker*, K.C., *Scrimgeour* and *Terence Donovan*.

Solicitors: *Solicitor of Inland Revenue*; *Layton & Co.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

CHANCERY DIVISION

In re **Repetition Engineering Service, Ltd.**

Cohen, J. 30th April, 1945

Company—Liquidation—Application to examine employee—Possibility of criminal proceedings—Whether order for examination should be made—Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 214.

Motion.

The applicant had been duly appointed on the 4th December, 1944, liquidator in the winding-up of R., Ltd. In the course of his investigations it appeared probable that a crime had been committed and he desired to examine X, an employee of the company who was intimately acquainted with its affairs, with regard to the alleged use of certain Government material supplied to the company. The liquidator applied under s. 214 of the Companies Act, 1929, for an order that he might be permitted to examine X under s. 214 respecting the affairs of the company and for the production of all books, papers, writings and documents in his custody relating to the company. Mr. Registrar Stiebel refused to make an order on the ground that X could, and no doubt would, refuse to answer questions that might be put to him on the ground that his answers might incriminate him and such refusal might be used against him in criminal proceedings. The liquidator appealed.

Cohen, J., said that while he agreed with the registrar that it was probable that if a crime had been committed X was a party to it, he did not think this was necessarily the case. There was a possibility that X might be able to supply information, which could be used by the liquidator, without giving answers which would incriminate him. This being so, an order must be made, notwithstanding that in the course of the examination some questions might be put which the witness would refuse to answer for fear of incriminating himself. There was nothing in the authorities inconsistent with this view. It was supported by *In re Imperial Continental Water Corporation*, 33 Ch. D. 314, *per* Cotton, L.J., at p. 320. While it might well be that the court should refuse to make an order, where the sole object of the application was to secure evidence which could be used in criminal proceedings against the person it was sought to examine, the position was different where the object was to obtain information of the kind specified in s. 214 and there was a possibility of such evidence being forthcoming without prejudice to the witness in criminal proceedings.

Counsel: *W. A. L. Raeburn.*

Solicitors: *H. Fishman & Co.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

APPOINTMENT OF "NEXT FRIEND"

Chester and North Wales Incorporated Law Society: Mr. Alan M. Miln, Hon. Secretary, St. Werburgh Chambers, Chester.

PRACTICE DIRECTION

Privileged Wills

It is directed by the President that when a will is tendered for probate as the privileged will of a sailor, soldier, airman, or other person, there shall be stated in detail in the oath to lead the grant, or in a supplementary affidavit, the circumstances on which the applicant relies as constituting the document a privileged will.

The domicil of the deceased must also be sworn to.

Cases of doubt should be referred to the Registrars, and may be so referred before the papers are sworn.

H. F. O. Norbury,
Senior Registrar.

7th May, 1945

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Solicitors acting for both Parties

Sir,—Your recent article on this subject is timely and should be carefully noted by the profession.

The public, ever anxious for the cheapest market, are gullible and should be protected. Many provincial societies, realising the pitfalls, have now passed rules prohibiting the practice of acting for both parties at reduced fees, and it is to be hoped this rule will become general and include the unorganised London area.

The basic objection to acting for both parties lies in the touting element which is in many cases unavoidably present.

There is the " tout direct " and the " tout indirect." The tout direct takes the crude form of solicitors or their clerks haunting auction rooms in the hope of picking up work, or the writing of letters by vendor's solicitors to purchasers inviting their instructions (frequently at reduced fees). The tout indirect is more insidious, and, perhaps, even more objectionable, because it is not so obvious to the intended victim. It takes the form of close association between certain firms of solicitors, and house agents and building and provident society secretaries.

These latter gentry (already in touch with vendors) are at pains, in many cases, to steer the unsuspecting purchaser into the vendor's solicitor, under the pretext that " it will cost less." Frequently the same solicitor acts also for the building society (who pay ridiculously inadequate fees), thus virtually forcing the solicitor to seek instructions from other parties if unremunerative work is to be avoided.

Not the least objection to the practice of acting for both parties is the bad blood created in the profession by the " stealing of clients " which results.

With the great increase in the numbers of small property owners, in recent years, it cannot be too strongly impressed upon the public that the wise man selects his own lawyer and sticks to him, resisting all blandishments to seek other advice however attractive the bait offered may be. This is not only in the best interests of the public but of the profession also.

Bath. GEO. E. HUGHES.
15th May.

NOTES AND NEWS

Honours and Appointments

Mr. JACK MEE, solicitor, of Stoke-on-Trent Corporation, has been appointed Town Clerk of Congleton. He was admitted in 1935.

Mr. ANTHONY WILDERS BEER, Assistant Solicitor to Wakefield Corporation, has been appointed Temporary Assistant Solicitor to the Southport Corporation. He was admitted in 1941.

Mr. T. R. F. BUTLER has been appointed Recorder of Newark in the place of Mr. CHARLES LAMOND HENDERSON, K.C., appointed Recorder of Warwick. Mr. Butler was called by the Inner Temple in 1921, and Mr. Henderson by the Middle Temple in 1920.

The Lord Chancellor has appointed Mr. H. D. SAMUELS, K.C., to the office of Official Referee of the Supreme Court of Judicature, in the place of His Honour C. M. Pitman, K.C., who has retired. He was called by Lincoln's Inn in 1908 and is Recorder of Bournemouth and a bencher of his Inn.

Notes

Alderman A. Critchley, who has been M.P. for the Edgehill division of Liverpool since 1935, has been rejected as the prospective Conservative candidate by the executive council, which has recommended the adoption of Mr. Wilfrid Clothier, K.C.

Brigadier Frank Medlicott, M.P., of Messrs. Medlicott & Co., solicitors, of Bedford Row, W.C.1, has relinquished the post of director of army welfare services with 21st Army Group in order to return to his Parliamentary duties.

Sir Cyril Radcliffe, K.C , who has been Director-General of the Ministry of Information since 1941, is resigning his post with a view to returning to his practice at the Bar. The resignation takes effect from the end of June.

The Judicial Committee of the Privy Council began its Trinity Sittings with a list of twenty-five appeals, of which fifteen are from India, two from Jamaica, two from West Africa, and one each from Egypt, Ceylon, Barbados, Rhodesia, and Somaliland, and one Prize appeal. Seven judgments await delivery.

Wills and Bequests

Mr. Travers Buxton, barrister-at-law, left £101,431.

RULES AND ORDERS

S.R. & O. 1945, No. 490

RAILWAY

RAILWAY AND CANAL COMMISSION

THE RAILWAY AND CANAL COMMISSION FEES ORDER, 1945

DATED APRIL 6, 1945

We, the Railway and Canal Commissioners, with the concurrence of the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers conferred upon us by The Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), and all other powers enabling us in this behalf, do hereby order as follows :—

1. The fees set out in the Schedule to this Order shall be taken in relation to all Appeals and proceedings before the Railway and Canal Commissioners under The Railways (Valuation for Rating) Act, 1930*, and to all such Appeals and Proceedings under the said Act as applied with adaptations and modifications by any Scheme made and approved by the Minister of Health under sub-section 3 of Section 92 of the London Passenger Transport Act, 1933.†

2. The fees shall be taken in stamps in accordance with the directions of the Treasury in force for the time being.

3. This Order may be cited as the Railway and Canal Commission Fees Order, 1945, and shall come into operation on the 2nd day of May, 1945.

Dated this 6th day of April, 1945.

F. J. Wrottesley, W. F. K. Taylor,
John Carmont, R. Francis Dunnell,
James Andrews,
William John, } Lords Commissioners of
L. R. Pym, } His Majesty's Treasury.

SCHEDULE

	£	s.	d.
1. On filing a Notice of Appeal	5	0	0
2. On filing an Answer	1	10	0
3. On filing any Reply or Affidavit	0	5	0
4. Every Summons upon Interlocutory proceedings	0	5	0
5. Every Order made thereon	0	5	0
6. Every Order giving Leave to Appear	0	5	0
7. Attendance by Counsel on Interlocutory proceedings. Each side	0	10	0
8. On sealing a Writ of Subpoena ad testificandum or duces tecum for each witness	0	2	6
9. Every hearing not in the nature of an Interlocutory proceeding ; and, if the hearing or further consideration occupies more than five hours, for each additional complete hour a further fee of	0	10	0
10. On drawing up and issuing under seal an Order made in Court	2	0	0
11. Office copies of proceedings (per folio)	0	0	6
12. On the taxation of a Bill of Costs ;			
(*a*) Where the amount allowed does not exceed £4	0	2	0
(*b*) Where the amount allowed exceeds £4 ; for every £2 or fraction thereof allowed	0	1	0
13. On the allowance of the result of a Taxation	0	10	0

NOTES

(1) The fees payable in all Interlocutory applications shall be paid before the Order is sealed and filed.

(2) All fees shall be paid by stamps on the form applicable to the various proceedings respectively, and such stamps shall be sold and issued at the Royal Courts of Justice in London ; in Edinburgh at the Inland Revenue Office, Waterloo Place.

(3) The fees in this Schedule may be altered or varied by order of the Commissioners with the consent of the Treasury.

* 20 & 21 Geo. 5, c. 24. † 23 & 24 Geo. 5, c. 14.

WAR LEGISLATION

STATUTORY RULES AND ORDERS, 1945

No. 567. **Aliens** (Firearms, etc. Restriction) Order. May 11.

E.P. 1483. **Channel Islands.** Emergency Powers (Channel Islands) Order in Council. May 18.

E.P. 547/S. 21. **Civil Defence,** Scotland (Employment and Offences) Order (Scotland). May 1.

E.P. 522. **Consumer Rationing** (Amendment of 1944 Consolidation) (No. 2) Order. May 15.

E.P. 561. **Control of Employment** (Civil Servants) Order. May 15.

E.P. 572. Control of Employment (Notice of Termination of Employment) (Revocation) Order. May 8.

E.P. 543. **Entering and Leaving United Kingdom.** Passenger Traffic Order. May 11.

E.P. 560. **Essential Work** (Permission to Terminate Employment) (Exemption) Order. May 8.
E.P. 563. **Finance.** The Regulation of Payments (Turkey) Order. May 18.
E.P. 549. **Fuel,** England and Wales. Restrictions on Heating No. 3 Revocation. May 11.
E.P. 550. Fuel (England and Wales). Revocation, May 11, of General Permit (Controlled Premises) No. 4.
E.P. 551/S. 22. Fuel (Scotland). Revocation, May 11, of General Permit (Restriction of Heating) No. 4.
E.P. 552/S. 23. Fuel (Scotland). Revocation, May 11, of General Permit (Controlled Premises) No. 5.
E.P. 536. **Restrictions on Lighting** (G.B.). Lighting (Restrictions) (No. 3) Order. May 11.
E.P. 537. Restrictions on Lighting (Northern Ireland). Lighting (Restrictions) (No. 4) (Northern Ireland) Order. May 11.
No. 510/L. 6. **Supreme Court,** England. Circuit (Wales and Chester) Order in Council. May 9.
No. 494. **Trading with the Enemy.** Specified Persons (Amendment) (No. 6) Order. May 10.

DRAFT STATUTORY RULES AND ORDERS, 1945

House of Commons (Redistribution of Seats) Order.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

COURT PAPERS

SUPREME COURT OF JUDICATURE

TRINITY SITTINGS, 1945

HIGH COURT OF JUSTICE—CHANCERY DIVISION

Mr. Justice UTHWATT

Such business as may from time to time be notified.

GROUP A

Mr. Justice COHEN

Mr. Justice COHEN will sit for the disposal of the Witness List.
Mondays—Companies Business.

Mr. Justice VAISEY

Mondays—Chamber Summonses.
Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays—Adjourned Summonses.
Thursdays—Adjourned Summonses.
Fridays—Motions and Adjourned Summonses.

Lancashire Business will be taken on Thursdays, 7th and 21st June and 5th and 19th July.

GROUP B

Mr. Justice EVERSHED

Mondays—Chamber Summonses.
Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays—Adjourned Summonses.
Thursdays—Adjourned Summonses.
Fridays—Motions and Adjourned Summonses.

Mr. Justice ROMER

Mr. Justice ROMER will sit for the disposal of the Witness List.
Mondays Bankruptcy Business.
Bankruptcy Motions will be heard on Mondays, 4th and 25th June and 16th July.
Bankruptcy Judgment Summonses will be heard on Mondays, 11th June, and 2nd and 23rd July.
A Divisional Court in Bankruptcy will sit on Mondays, 18th June and 9th July.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.			Emergency Rota.	Appeal Court I.	Mr. Justice Uthwatt.
Mon.,	June	4	Mr. Andrews	Mr. Farr	Mr. Blaker
Tues.,	,,	5	Jones	Blaker	Andrews
Wed.,	,,	6	Reader	Andrews	Jones
Thurs.,	,,	7	Hay	Jones	Reader
Fri.,	,,	8	Farr	Reader	Hay
Sat.,	,,	9	Blaker	Hay	Farr

Date.			Group A. Mr. Justice Cohen. *Witness.*	Mr. Justice Vaisey. *Non-Witness.*	Group B. Mr. Justice Eversheд. *Non-Witness.*	Mr. Justice Romer. *Witness.*
Mon.,	June	4	Mr. Reader	Mr. Hay	Mr. Jones	Mr. Andrews
Tues.,	,,	5	Hay	Farr	Reader	Jones
Wed.,	,,	6	Farr	Blaker	Hay	Reader
Thurs.,	,,	7	Blaker	Andrews	Farr	Hay
Fri.,	,,	8	Andrews	Jones	Blaker	Farr
Sat.,	,,	9	Jones	Reader	Andrews	Blaker

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price 28th May 1945	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after ..	FA	111	3 12 1	2 18 0
Consols 2½%	JAJO	83	3 0 3	—
War Loan 3% 1955–59	AO	102½	2 18 6	2 14 2
War Loan 3½% 1952 or after ..	JD	103½	3 7 8	2 19 5
Funding 4% Loan 1960–90 ..	MN	113½	3 10 6	2 17 6
Funding 3% Loan 1959–69 ..	AO	100¾	2 19 6	2 18 7
Funding 2¾% Loan 1952–57 ..	JD	101	2 14 5	2 11 10
Funding 2½% Loan 1956–61	AO	98½	2 10 9	2 12 4
Victory 4% Loan Av. life 18 years ..	MS	113½	3 10 6	3 0 4
Conversion 3½% Loan 1961 or after	AO	106	3 6 0	3 0 4
National Defence Loan 3% 1954–58	JJ	103	2 18 3	2 12 0
National War Bonds 2½% 1952–54 ..	MS	100⅝	2 9 8	2 8 1
Savings Bonds 3% 1955–65 ..	FA	101	2 19 5	2 17 8
Savings Bonds 3% 1960–70 ..	MS	100¼	2 19 10	2 19 7
Local Loans 3% Stock	JAJO	95½	3 2 10	—
Bank Stock	AO	385½	3 2 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	97½	3 1 6	—
Guaranteed 2½% Stock (Irish Land Act 1903)	JJ	93½	2 18 10	—
Redemption 3% 1986–96	AO	100	3 0 0	3 0 0
Sudan 4½% 1939–73 Av. life 16 years	FA	116	3 17 7	3 4 1
Sudan 4% 1974 Red. in part after 1950	MN	111	3 12 1	1 16 6
Tanganyika 4% Guaranteed 1951–71	FA	106½	3 15 1	2 14 1
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	98½	2 10 9	2 13 2
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	107	3 14 9	3 3 5
Australia (Commonw'h) 3½% 1964–74	JJ	101	3 4 4	3 3 7
Australia (Commonw'h) 3% 1955–58	AO	99	3 0 7	3 1 11
†Nigeria 4% 1963	AO	114	3 10 2	2 19 8
*Queensland 3½% 1950–70	JJ	103	3 8 0	2 15 5
Southern Rhodesia 3½% 1961–66 ..	JJ	105	3 6 8	3 1 11
Trinidad 3% 1965–70	AO	100	3 0 0	3 0 0
Corporation Stocks				
*Birmingham 3% 1947 or after ..	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	101	2 19 5	—
*Leeds 3¼% 1958–62	JJ	103	3 3 1	2 19 5
*Liverpool 3% 1954–64	MN	100	3 0 0	3 0 0
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	105½	3 6 4	—
London County 3% Con. Stock after 1920 at option of Corporation ..	MSJD	95½	3 2 10	—
*London County 3½% 1954–59 ..	FA	107	3 5 5	2 12 4
Manchester 3% 1941 or after ..	FA	96	3 2 6	—
*Manchester 3% 1958–63	AO	101	2 19 5	2 18 2
Met. Water Board 3% "A" 1963–2003	AO	97½	3 1 6	3 1 6
Do. do. 3% "B" 1934–2003 ..	MS	99	3 0 7	3 0 11
Do. do. 3% "E" 1953–73 ..	JJ	99½	3 0 4	3 0 6
Middlesex C.C. 3% 1961–66 ..	MS	101	2 19 5	2 18 5
*Newcastle 3% Consolidated 1957 ..	MS	101	2 19 5	2 18 0
Nottingham 3% Irredeemable ..	MN	95	3 3 2	—
Sheffield Corporation 3½% 1968 ..	JJ	107½	3 5 1	3 0 10
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture ..	JJ	116½	3 8 8	—
Gt. Western Rly. 4½% Debenture ..	JJ	123½	3 12 10	—
Gt. Western Rly. 5% Debenture ..	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge ..	FA	135½	3 13 10	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	132½	3 15 6	—
Gt. Western Rly. 5% Preference ..	MA	119	4 4 0	—

* Not available to Trustees over par.
† Not available to Trustees over 115.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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